THE HONOURABLE SRI JUSTICE N.V.RAMANA

Writ Petition No.23899 of 2005

Dated: 21st April, 2006

Between:

K.V.Kamalakara Rao.

…..PETITIONER

AND

The Executive Engineer, A.P. TRANSCO

TCL Division, Rajahmundry

East Godavari District & another.

….RESPONDENTS

THE HONOURABLE SRI JUSTICE

N.V.RAMANA

W.P. No. 23899 of 2005

ORDER:

Assailing the proceedings, issued by respondent No.1 in Memo No.EE/TLCR/Adm/HC/F.9/2155/2002. dated 11-3-2003, placing the petitioner under suspension, the present writ petition is filed.

Petitioner who is a Junior Lineman in A.P. Transco

at Rajahmundry of East Godavari district, was suspended by the 1st respondent by proceedings in Memo No.EE/TLCR/Adm/HC/F.9/2155/2002, dated 11-3-2003, on the ground that he was arrested in connection with the crime in Crime No.32 of 2003, on a complaint lodged by his wife under Sections 498-A and 494 I.P.C. Petitioner filed representation dated 4-7-2003 to respondent No.1 for revocation of his suspension, but in vain.

Learned counsel for the petitioner submitted that though three years had elapsed from the date the petitioner has been placed under suspension, no action had been taken by respondent No.1 to revoke the suspension. He submits that the action of respondent No.1 in continuing him under suspension without assigning any reasons, is illegal and arbitrary, and in support of his submission that continuing him under suspension indefinitely without considering the public interest and the impact the case has on the employee, is illegal, he placed reliance on a judgment of a Division Bench of this Court in ***P.Rajender Vs. Union of India***.

Counter affidavit is filed by respondent No.2/Assistant Executive Engineer, TLC SS Sub-Division, A.P. Transco, Rajahmundry, East Godavari District. At para 3 of the counter, it is stated that the petitioner, having regard to Regulation 11(b) of A.P.S.E.B. Employees Revised Conduct and Disciplinary and Appeal Regulations, was placed under suspension with effect from 25-2-2003 as he was arrested and remanded to Bhimavaram Sub-Jail on 25-2-2003. It is contended that the petitioner cannot be reinstated until the criminal case registered against him is decided, and until conclusion of the criminal case, in public interest, it is necessary to continue the petitioner under suspension.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

On the ground that a case for the offences under Sections 494 and 498-A IPC has been registered against the petitioner, and in connection with which he was remanded to judicial custody, respondent No.1 vide orders dated 11.03.2003, placed the petitioner under suspension until the termination of the criminal proceedings. Admittedly, the criminal proceedings against the petitioner are not terminated, and it is stated that the investigation having been completed, charge sheet is also filed. Even though the petitioner has been placed under suspension since 11.03.2003, till date respondent No.1 had not revoked the suspension.

No doubt, the petitioner has been placed under suspension in public interest, but apart from public interest, the authority is required to take into consideration relevant facts and attendant circumstances and to what extent the public interest is protected if the employee is under suspension. In **P. Rajender v. Union of India**, a Division Bench of this Court considered similar issue, as is appearing in the present case, and held thus:

Suspension pending investigation, inquiry or trial is interim in nature. The aforementioned rule clearly suggests that an order of suspension is not required to

be passed only because it will be lawful to do so. An application of mind on the part of the competent authority is sine qua non for passing such order of suspension. Before passing of an order of suspension, therefore, it is expected that the appropriate authority shall not only take into consideration the public interest but shall also take into consideration the relevant facts and attendant circumstances as to how far and to what extent the public interest may suffer if the delinquent officer is not placed under suspension.

The Division Bench further held as follows:

The question as to when the petitioner had undertaken the second marriage and whether it had any impact on the petitioner's continuing to work in public service despite the fact that investigation had ready been completed and charge-sheet had also been filed in a case filed by the petitioner's wife, were relevant factors to be taken into consideration at the time of passing the order.

From the above it is clear that the appropriate authority before passing order of suspension shall not only take into consideration the public interest but shall also take into consideration the relevant facts and attendant circumstances as to how far and to what extent the public interest suffer if the delinquent officer is not placed under suspension.

In the instant case, respondent No.1 except stating that the petitioner was arrested and remanded in connection with Crime No.32 of 2003 of I Town Police Station, Bhimavaram, for the offences punishable under Section 498-A and 494 of I.P.C r/w.
156(3), has not assigned any reason whatsoever in placing the petitioner under suspension. Respondent No.1 while placing the petitioner under suspension, was expected to consider whether the continuance of the petitioner in the office, would affect the discharge of his duties or will cause prejudice to the investigation, and more so when the case registered against the petitioner has nothing to do with the discharge of his duties. But respondent No.1 without considering these aspects placed the petitioner under suspension, and though the petitioner was placed under suspension as far back as on 11.03.2003, till date respondent No.1 had not reviewed the necessity of continuing the petitioner under suspension, and more so when the investigation in the matter is completed, and charge sheet is also laid, and the case is numbered as C.C.No.141 of 2003.

In the result, the writ petition is allowed. Respondent No.1 is directed to review the case of the petitioner for revocation of suspension, in the light of the observations of the judgment of the Division of this Court in **P. Rajender v. Union of India** and keeping in view the fact that the petitioner has not committed any irregularities or malpractices while discharging his duties, and the investigation of the case in which he is said to be involved, has already been completed and charge sheet is also filed, and pass appropriate orders expeditiously.

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(N.V. RAMANA, J.)

Date:21st April, 2006.

GRK